

A 1% sales tax rate, plus applicable local taxes, is applied to food sold for human consumption to be consumed off the premises where sold, drugs, medicines and medical appliances. See 86 Ill. Adm. Code 130.310. (This is a GIL).

March 5, 2002

Dear Xxxxx:

This letter is in response to your letter dated January 2, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

This is regard to sales tax payments that I pay. I bake and sell at PLACE in summer. I do not sell by the piece to be eaten in location that I sell it. Everything is packaged and my customers take it home with them. They do not come to my little bakery at home to buy at eat it, even though I am approved by health dept. I live out in county, and I hire no help. No individual pieces of pie and cakes to be eaten where I sell. Please send me letter ruling that I pay the 1% or the higher rate which I know I shouldn't pay.

For your information and reference, please find enclosed a copy of the Department's regulation on the reduced tax rate under the Retailers' Occupation Tax Act applicable to food, drugs, medicines and medical appliances, 86 Ill. Adm. Code 130.310. A 1% sales tax rate, plus applicable local taxes, is applied to food sold for human consumption to be consumed off the premises where sold, drugs, medicines and medical appliances. Food that is prepared for immediate consumption and items that do not qualify as drugs, medicines and medical appliances are taxed at the regular sales tax rate of 6.25%, plus any local taxes.

Food is defined as "any solid, liquid, powder or item intended by the seller primarily for human consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice." See Section 130.310(b)(1).

Taxation of food at the reduced sales tax rate depends on whether the food is prepared for immediate consumption or for consumption off the premises where sold; therefore, the nature of the premises where the food is sold is a factor in determining the applicable sales tax rate. All sales by a retail establishment that provides facilities for on-premises consumption of food are subject to the high rate of tax unless the facility utilizes a separate means of recording and collecting receipts from food for consumption on the premises, and the area where food not for immediate consumption is sold is physically partitioned from the area of food sold for immediate consumption. See 86 Ill. Adm. Code 130.310(b)(2)(A) and (b)(3).

Where an establishment does not provide facilities for on-site consumption, the business would still charge a high rate of tax on all food sales if a majority of the gross receipts from food resulted from food items sold in a state of preparation for immediate consumption. However, where an establishment primarily sells food (over 50%) in bulk, such establishment would incur the reduced rate on all food items, except soft drinks, food prepared for immediate consumption and alcoholic beverages, which are always taxed at the high rate. A retailer who sells whole pies and cakes at a farmer's market and provides no facilities for on-site consumption, should charge the 1% sales tax rate, plus applicable local taxes.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.